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Name of applicant, assignee or registered representative  
*Frank C. Nicholas*  
Signature  
June 3, 2004  
Date of Signature

PATENT  
Case No.: AUS920010390US1  
(9000/41)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re patent application of:	)	
	)	
KULVIR S. BHOGAL, ET AL.	)	Examiner: OMARY, NAWARA
	)	
Serial No.: 09/881,873	)	Group Art Unit: 2683
	)	
Filed: JUNE 14, 2001	)	
	)	
Title: TRACKING COMMUNICATION	)	
USAGE TIME	)	

**APPEAL BRIEF**

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P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Appellants herewith respectfully present their Brief on Appeal as follows.

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1. REAL PARTY IN INTEREST

The real party in interest is Assignee INTERNATIONAL BUSINESS MACHINES CORPORATION, by virtue of an assignment executed by the inventors on June 6, 11, and 13, 2001 and filed with the United States Patent and Trademark Office on June 14, 2001, recorded at reel number 011917 frame number 0707.

2. RELATED APPEALS AND INTERFERENCES

Appellants and the undersigned attorneys are not aware of any appeals or any interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS

Claims 1-31 are currently pending and stand finally rejected. Claims 1-3, 7-9, 12-18, 22-24 and 27-31 stand rejected as anticipated by Lewis, et. al., United States Patent No. 5,684,861. Claims 4 and 19 stand rejected as unpatentable over Lewis in view of Abe et. al., United States Patent No. 5,966,509. Claims 5 and 20 stand rejected as unpatentable over Lewis in view of Kraushaar et. al., United States Patent No. 4,200,711. Claims 6 and 21 stand rejected as unpatentable over Lewis in view of O'Donovan et. al., United States Patent No. 5,960,070. Claims 10, 11, 25 and 26 stand rejected as unpatentable over Lewis in view of Altshul et. al., United States Patent No. 5,875,393.

Claims 1-31 are the claims on appeal. See, Appendix.

4. REFERENCES

The Examiner cited five references against the application. Lewis, et. al., United States Patent No. 5,684,861, Abe et. al., United States Patent No. 5,966,509, Kraushaar et. al., United States Patent No. 4,200,711, O'Donovan et. al., United States Patent No. 5,960,070, and Altshul et. al., United States Patent No. 5,875,393.

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#### 5. STATUS OF AMENDMENTS

No amendments have been made. A reply under 37 C.F.R. §1.111 was filed on January 6, 2004 and entered into the application. This appeal was filed in response to an office action mailed March 25, 2004.

#### 6. SUMMARY OF INVENTION

The invention relates to a method of tracking communications usage time. In response to a call, time increments are counted, and a call count is determined based on the counted time increments. The call count is then modified based on calling plan parameters. A computer usable medium to accomplish the method steps is also provided, as well as a system including means for counting time increments in response to a call, means for determining a call count based on time increments and means for modifying the call count based

Modifying the call count may involve several operations. One example of a call count modification is rounding the call count to the nearest minute. Another exemplary call count modification involves subtracting an initial open connection time from the call count. In another example, modifying the call count involves discounting incoming calls, or discounting nighttime or weekend calls. See, Specification of United States Patent Application, 09/881,873 at pages 6-7

#### 7. ISSUES

Are claims 1-3, 7-9, 12-18, 22-24 and 27-31, calling for "modifying the call count based on calling plan parameters" anticipated by Lewis' disclosure of generating statistical information indicative of telephone usage and setting parameter values associated with the statistical information indicative of a customer billing plan and the current date and time?

#### 8. GROUPING OF CLAIMS

Claims 1-31 should be considered as one group, standing or falling with claim 1

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#### 9. ARGUMENTS

Claim 1 requires "modifying the call count based on calling plan parameters."

As this limitation is not disclosed, nor taught or suggested, by Lewis, the 102(b) rejection has been traversed, and should be withdrawn. "Modifying the call count based on calling plan parameters" is extensively described and defined in the specification on pages 6-7 as described above in the summary of invention.

Lewis does not disclose modifying the call count based on calling plan parameters. The Examiner referenced the abstract, as well as column 3 lines 12-29 and column 5, line 55 to column 6, line 19, as disclosing this claimed element. However, at most, Lewis discloses merely having a call count. Specifically, Lewis discloses a method and apparatus that "generates statistical information indicative of telephone usage" (Abstract). The Lewis apparatus and method "allows the user to set parameter values associated with statistical information indicative of a customer billing plan and the current date and time." (Abstract). At most, Lewis discloses that a call count (i.e. the statistical information) is kept. Nowhere does Lewis disclose "modifying the call count based on calling plan parameters."

Although the Examiner argues that the disclosure "the microprocessor maintains [and][sic] updates the statistical information as necessary" is "equivalent to" the claim language, the argument fails – the claim requires not only that the call count is modified, but that the modification occur "based on calling plan parameters."

Lewis discloses a battery operated monitoring apparatus to be installed by a user on a cellular telephone in close proximity to the antenna, in order to estimate cell phone usage. Usage is tracked and compared to the customer billing plan. See, Lewis, Abstract. However, Lewis does not describe modifying the call count based on the calling plan parameters.

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Furthermore, Lewis does not disclose "adding the modified call count, and determining an accumulated call count" as claimed in claim 2. Lewis does not disclose "subtracting the modified call count from a time ration, and determining a remaining call time" as claimed in claim 3. Lewis does not disclose using a modified call count, and rather discloses merely a rote summation of time increments. Furthermore, claims 2 and 3 depend from claim 1, and are therefore allowable over Lewis for at least the same reasons. Claims 7-8 depend from claim 1 and are therefore allowable over Lewis for at least the same reasons. Claims 17 and 18 depend from claim 16 and are allowable over the prior art for at least the same reasons. Claims 22 and 23 depend from claim 16 and are allowable over the prior art for at least the same reasons. Additionally, claims 22 and 23 incorporate limitations similar to the limitations of claims 7 and 8, and are therefore allowable over the prior art for similar reasons.

Lewis does not disclose a modified call count as claimed in claim 9. Further, claim 9 depends from claim 1. Therefore, claim 9 is allowable over Lewis. Claims 12-15 depend directly from claim 9 and indirectly from claim 1, and are therefore allowable over the prior art for at least the same reasons. Claims 27-30 depend from claim 16 and incorporate limitations similar to claim 12-15 and are therefore allowable over the prior art for at least the same reasons.

The remaining claims, rejected under §103(a) each depend, directly or indirectly, from claim 1 and are allowable over the prior art for at least the same reasons. Where an independent claim is nonobvious, any claim depending therefrom is also non-obvious. See MPEP §2143.03 (If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ 1596 (Fed Cir. 1988)).

However, additionally, the references, alone or in combination, fail to teach or suggest "modifying the call count based on calling plan parameters" as claimed in the independent claims, and there is no suggestion or motivation provided in the references to arrive at the claimed invention. Indeed, by *solely* teaching methods that *sum* the call count, and do not *modify* the call count, each reference directly and unequivocally teaches away from the claimed invention.

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Therefore, specifically, claims 4 and 19 are patentable over Lewis in view of Abe as the references fail to teach or suggest "modifying the call count based on calling plan parameters" as claimed in claims 1 and 16. Claims 5 and 20 are patentable over Lewis in view of Kraushaar as the references fail to teach or suggest "modifying the call count based on calling plan parameters" as claimed in claims 1 and 16. Claims 6 and 21 are patentable over Lewis in view of O'Donovan as the references fail to teach or suggest "modifying the call count based on calling plan parameters" as claimed in claims 1 and 16. Claims 10, 11, 25 and 26 are patentable over Lewis in view of Altschul as the references fail to teach or suggest "modifying the call count based on calling plan parameters" as claimed in claims 1 and 16.


Thus, Group I is patentable over the prior art.

The Appellants respectfully submit that claims 1-31 fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112. In view of the foregoing, favorable consideration and early passage to issue of the present application is respectfully requested.

Dated June 4, 2004

Respectfully submitted,

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## 10. APPENDIX

1. Method of tracking communications usage time comprising:  
counting time increments in response to a call;  
determining a call count based on time increments, and  
modifying the call count based on calling plan parameters
2. The method of claim 1 further comprising,  
adding the modified call count, and  
determining an accumulated call count
3. The method of claim 1 further comprising;  
subtracting the modified call count from a time ration, and  
determining a remaining call time
4. The method of claim 1 wherein modifying the call count comprises  
rounding the call count
5. The method of claim 1 wherein modifying the call count comprises sub-  
tracting an initial open connection time from the call count
6. The method of claim 1 wherein modifying the call count comprises dis-  
counting an incoming call

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7. The method of claim 1 wherein modifying the call count comprises discounting a nighttime call.

8. The method of claim 1 wherein modifying the call count comprises discounting a weekend call.

9. The method of claim 1 further comprising,  
providing a special usage parameter;  
calculating a special call count based on the special usage parameter and the modified call count

10. The method of claim 9 wherein the special usage parameter comprises a long distance parameter, and the special call count comprises a long distance usage count

11. The method of claim 9 wherein the special usage parameter comprises a local distance parameter, and the special call count comprises a local distance usage count

12. The method of claim 9 wherein the special usage parameter comprises a nighttime usage parameter, and the special call count comprises a nighttime usage count.

13. The method of claim 9 wherein the special usage parameter comprises a weekend usage parameter, and the special call count comprises a weekend usage count.



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14. The method of claim 9 wherein the special usage parameter comprises a peak usage parameter, and the special call count comprises a peak usage count

15. The method of claim 9 wherein the special usage parameter comprises an off-peak usage parameter, and the special call count comprises an off-peak usage count

16. A computer usable medium including a program for tracking communications usage time comprising:

computer readable program code for counting time increments in response to a call;

computer readable program code for determining a call count based on time increments; and

computer readable program code for modifying the call count based on calling plan parameters

17. The computer usable medium of claim 16 further comprising:  
computer readable program code for adding the modified call count; and  
computer readable program code for determining an accumulated call count

18. The computer usable medium of claim 16 further comprising:  
computer readable program code for subtracting the modified call count from a time ration; and  
computer readable program code for determining a remaining call time

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19. The computer usable medium of claim 16 wherein modifying the call count comprises rounding the call count.
20. The computer usable medium of claim 16 wherein modifying the call count comprises subtracting an initial open connection time from the call count.
21. The computer usable medium of claim 16 wherein modifying the call count comprises discounting an incoming call.
22. The computer usable medium of claim 16 wherein modifying the call count comprises discounting a nighttime call.
23. The computer usable medium of claim 16 wherein modifying the call count comprises discounting a weekend call.
24. The computer usable medium of claim 16 further comprising,  
computer readable program code for providing a special usage parameter,  
computer readable program code for calculating a special call count  
based on the special usage parameter and the modified call count.
25. The computer usable medium of claim 24 wherein the special usage parameter comprises a long distance parameter, and the special call count comprises a long distance usage count.

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26 The computer usable medium of claim 24 wherein the special usage parameter comprises a local distance parameter, and the special call count comprises a local distance usage count.

27 The computer usable medium of claim 24 wherein the special usage parameter comprises a nighttime usage parameter, and the special call count comprises a nighttime usage count.

28 The computer usable medium of claim 24 wherein the special usage parameter comprises a weekend usage parameter, and the special call count comprises a weekend usage count.

29 The computer usable medium of claim 24 wherein the special usage parameter comprises a peak usage parameter, and the special call count comprises a peak usage count.

30 The computer usable medium of claim 24 wherein the special usage parameter comprises an off-peak usage parameter, and the special call count comprises an off-peak usage count.

31 A communications usage time tracking system comprising:  
means for counting time increments in response to a call;  
means for determining a call count based on time increments; and  
means for modifying the call count based on calling plan parameters

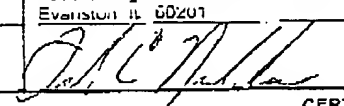
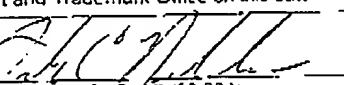
<h1>TRANSMITTAL FORM</h1> <p>(to be used for all correspondence after initial filing)</p>	Attorney Docket NO	AUS920010390US1 (9000/41)
	Application Number	09/881 873
	Filing Date	JUNE 14, 2001
	First Named Inventor	KULVIR S. BHOGAL
	Group Art Unit	2623
Examiner	OMARY, NAVVARA T	

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Indep.	Minus		0	x \$43=	0			x \$80=	
First Presentation of Multiple Dep. Claim				x \$145=	---			x \$290=	
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